

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,

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§
§

v.

3:12-CR-007-O(01)

**DAVID EUGENE THURSBY,
Defendant.**

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. Plaintiff/Petitioner filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court **ACCEPTS** the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that Defendant's motion to reduce sentence [Doc. 99] is **DENIED** for lack of jurisdiction.

The Clerk of the Court is **directed to open for indexing purposes** a new habeas corpus action pursuant to 28 U.S.C. § 2241 (nature of suit 530 -- assigned to the same district judge and magistrate judge) and to close the same on the basis of the order accepting this recommendation.

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and

Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).² In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED this 23rd day of May, 2014.



Reed O'Connor
UNITED STATES DISTRICT JUDGE

²Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.